



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Advanced Seal Technology, Inc.

**File:** B-241924

**Date:** March 8, 1991

James P. Rome, Esq., Rome & Associates, Ltd., for the protester.

Joel R. Feidelman, Esq., and Terry E. Miller, Esq., Fried, Frank, Harris, Shriver & Jacobson, for John Crane, Inc., an interested party.

Robert L. Mercadante, Esq., and John P. Patkus, Esq., Defense Logistics Agency, for the agency.

David Hasfurther, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### **DIGEST**

Where protester offered an alternate item, the protester's use of a different component in an approved source item was considered a major design change from the approved design for the item, and the contracting agency lacked the technical data necessary to evaluate the component, agency is not required to delay the award until protester's component could undergo operational testing to determine its acceptability.

### **DECISION**

Advanced Seal Technology, Inc. (AST) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DLA500-90-R-0392, issued by the Defense Industrial Supply Center (DISC) for the procurement of 115 mechanical seal assemblies. We deny the protest.

The RFP, issued on May 29, 1990, required offers for the assemblies to be submitted by June 28. These assemblies, which go into pumps used on ships for pumping water, consist basically of a nose seal and a spring which is located in a housing at one end of the nose seal. The function of the spring is to maintain pressure on the nose seal so that contact is maintained between the nose seal and another stationary face seal. Because the government had no technical data for developing competitive specifications for the

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assemblies, the contracting officer had determined that obtaining full and open competition for the procurement was not possible. Accordingly, the RFP, as issued, listed the only two assemblies--Alco Power Inc. part No. 2250035 and Crane Packing Co. part No. CFSP30015--that had previously been approved as meeting the government's assembly requirements. In addition to being able to offer one of these parts, an offeror was also permitted by the RFP to offer an alternate assembly so long as sufficient data was submitted to permit a determination that the alternate assembly was "physically, mechanically, electrically, and functionally interchangeable with" the two approved assemblies. The RFP advised that the government would make every reasonable effort to determine, prior to award, the acceptability of an offered alternate product, but that, if such a determination could not be accomplished by the expected contract award date, the product would be considered technically unacceptable for the purposes of the immediate award.

The agency received three proposals. AST submitted the lowest priced offer (\$150 per unit) based on supplying its own part (No. PFS-2000-5). John Crane, Inc. submitted a unit price of \$193 based on supplying the Crane part listed in the RFP. Murdock Enterprises, Inc. offered a unit price of \$254 based on supplying the same Crane part. After AST's offer was rejected, award was made to Crane on October 24.

AST's assembly was rejected because it used a wave spring, not a coil spring like the approved assemblies, which the Naval Sea Systems Command (NAVSEA), the activity responsible for testing any alternate assemblies, determined would not provide "adequate spring loading over the whole service life of the primary nose seal." This determination was based on the technical data submitted by AST, and without operational testing of the item. Specifically, NAVSEA determined that "design changes" in AST's assembly precluded it from being considered "equivalent" or "interchangeable" to the approved items. NAVSEA determined that AST's assembly contained "a major design change from a coil spring to a wave spring [which] has less operable working length than a coil spring." The agency also determined that design changes to pump components could adversely affect the operation of the pump and could void any pump warranty. DISC also found that coil springs are generally more reliable and are better for cyclic applications than wave springs.<sup>1/</sup>

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<sup>1/</sup> The agency states that technical data and literature on coil springs are readily available, while similar data are not published for wave springs.

AST contends that the agency's technical determination was incorrect since the design load of AST's wave spring (as shown on the detail drawing it submitted) was sufficient to maintain a true seal throughout the entire operating life of the carbon composition core of the nose seal. AST insists that wave springs can provide the same load as coil springs. AST concedes, however, that to prove that the wave spring will retain the required load over the normal operating life of the seal assembly, operational testing must be done.<sup>2/</sup>

As a general matter, the existence of procedures which are reasonably calculated to provide potential offerors with an opportunity to demonstrate that their products meet an agency's minimum needs at some stage of the planning process or of the procurement process itself is a necessary precondition to the valid imposition of solicitation restrictions which limit competition to the products of one or more manufacturers. See Sturm, Ruger & Co. Inc., B-235935, Oct. 25, 1989, 89-2 CPD ¶ 375. However, an offeror's right to such an opportunity is limited by the right of the agency (as stated here in the RFP) not to delay award should it be unable to complete the testing necessary for approval of an alternate. See Kitco, Inc., B-232363, Dec. 5, 1988, 88-2 CPD ¶ 559.

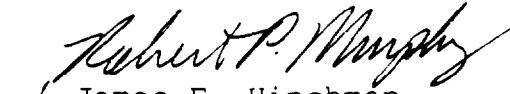
In the instant case, the agency did not make award for 4 months after the closing date for the receipt of proposals, requesting offerors to extend the acceptance period for their proposals, while it obtained AST's technical data and then evaluated that data. After this had been accomplished, the agency determined that operational testing would be required in order to properly determine whether the use of a wave spring in the assembly was acceptable. Based on this record, we cannot object to the agency's determination that AST's alternate could not be approved solely on the basis of the technical data it submitted in view of the design change caused by the use of the wave spring. The protester has not

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<sup>2/</sup> In its comments on the agency report, AST also alleges for the first time that the agency denied it an opportunity to compete by unreasonably delaying testing and approval of its alternate component which had been submitted to the agency previous to this procurement. This allegation is dismissed as untimely since it was filed more than 10 days after the protester knew or should have known the basis of this protest ground. See 4 C.F.R. § 21.2(a)(2) (1990).

shown otherwise. Under the express terms of the RFP, the agency was not required to delay an award further pending the operational testing of AST's assembly. See id.

The protest is denied.

  
for James F. Hinchman  
General Counsel